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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,531	01/23/2004	John Topper	374-001U	9222
23429	7590	06/02/2006	EXAMINER OKEZIE, ESTHER O	
GREGORY SMITH & ASSOCIATES 3900 NEWPARK MALL ROAD, 3RD FLOOR NEWARK, CA 94560			ART UNIT 3652	PAPER NUMBER

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/763,531	Applicant(s) TOPPER, JOHN	
	Examiner Esther O. Okezie	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/15/06 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1,2,4-16 rejected under 35 U.S.C. 103(a) as being unpatentable over Leonard, Jr. et al in view of Shields.
2. Regarding claim 1, Leonard discloses a twist lock apparatus for lifting cargo comprising: a catch (fitting 13) including a top panel, said top panel having a top surface, a bottom surface (figure 2) and at least one slot (15) open to an entry hole in said top panel, a bob (21) including weighted body (26), said weighted body being

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insertable through said entry hole in said top panel, said at least one slot being sized to receive said shank, and a tether (41) attached to said tether anchor.

However, Leonard discloses only one receiving slot (15) for the weighted body (26) to pass through. Leonard does not teach said at least one slot comprising a confining end and a receiving end wherein the weighted body is insertable through the entry hole only and not the through the at least one slot. Shields discloses an apparatus for securing loads prior to lifting which includes tie down plate (18) with entry hole (34) and slots (40) including receiving end (44) and a confining end (38) that engages the shaft (56) of the bulb hook (26). The slots or cutout arms (44) are of smaller width than the bob or cylindrical base (54) so that the cylindrical base is confined in the entry hole (see figures 1,2,4, and 6; abstract; col. 3,lines 23-65). In fact, Shields disclose the device of claim 1, but does not disclose this device for lifting cargo, but for securing cargo against shifting during lifting. It would have been obvious to one of ordinary skill in the art to modify the entry hole (15) of the corner fitting of Leonard, Jr. et al. to include slots with confining ends as taught by Shields so that the weighted body or crossbar (26) could be further restricted from passing through the hole and disengaging from the corner fitting and consequently dropping the load.

3. Regarding claim 2 Leonard et al. discloses the device of claim 1 comprising: a securing means for attaching said catch to said load to be moved, corner fitting (13) is welded to cargo container (11) which holds the load.

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4. Regarding claim 4 Leonard discloses the device of claim 1 wherein said shank may be received in said slot, and said weighted body may contact said bottom surface of said top panel when said portable lifting device is used to lift an object (see figs 3-6).

5. Regarding claim 5 Leonard discloses the device of claim 1 wherein said catch comprises at least one side panel (fig 2).

6. Regarding claim 6 Leonard discloses the device of claim 1 wherein said catch comprises at least four side panels (fig 2).

7. Regarding claim 7 Leonard discloses the device of claim 1 wherein said catch comprises a single piece of durable rigid material (fig 2; col. 1, lines 18-23).

8. Regarding claim 8 Leonard discloses the device of claim 1 wherein said catch comprises a bottom panel (figs 5 and 6).

9. Regarding claim 9 Leonard discloses the device of claim 1 comprising a means for securing said catch to an object to be lifted (corner fitting 13 is welded to cargo container 11 that secures the load).

10. Regarding claim 10, Leonard, Jr. et al does not disclose a securing means for attaching the load to the catch comprising at least one strap, Leonard discloses a container for securing the load. Shields discloses a strap (rope 30) for securing vessel (8). It would have been obvious to one of ordinary skill in the art at the time of the invention to further secure the load in the container with a strap as taught by Shields so that the load would not shift during transport.

11. Regarding claim 11, Leonard does not disclose the entry slot comprising four slots. Shields discloses four slots (40) arranged equidistant from the entry slot (34). It

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would have been obvious to one of ordinary skill in the art at the time of the invention to provide four equidistant slots as taught by Shields in order to confine the weight of the twistlock in all four of the cardinal directions of movement.

12. Regarding claim 12 Leonard discloses the device of claim 1 wherein the weighted body comprises a durable rigid material (the twist-lock is made from heavy casted material; col. 3, lines 55-60).

13. Regarding claim 13, Leonard discloses an apparatus for lifting cargo wherein said weighted body is cylindrical in shape (26).

14. Regarding claim 14 Leonard discloses the device of claim 1 wherein anchor is sized to prevent passage through said entry hole (see figures 3 and 4).

15. Regarding claim 15 and 16 Leonard discloses the method of claims 15 and 16 for selectively moving a load between a low position and an elevated position the steps comprising:

- a. providing a portable lifting device comprising a catch including a top panel, said top panel having a top surface, a bottom surface and at least one slot, said at least one slot comprising a confining end and a receiving end open to an entry hole in said top panel, a bob including weighted body, a shank projecting from said weighted body, and a tether anchor connected to said shank, said weighted body being insertable through said entry hole in said top panel, but not through said at least one slot said at least one slot being sized to receive said shank, a tether attached to said tether anchor(figures 1-4);
- b. securing said catch to said load;

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- c. lowering said bob to said catch and allowing said weighted body of said bob to pass through said entry hole;
- d. moving said shank into one said slot;
- e. applying a vertical force to said tether causing said weighted body to contact said the bottom surface of said top panel; and
- f. adjusting a length of tether between a user and said tether anchor to raise or lower the load;
- g. lowering the load to a support surface;
- h. allowing said shank to move in said slot toward said entry hole; and
- i. pulling said weighted body upward through said entry hole (see figures 1-8).

17. Claims 1,3,17,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reich in view of Shields.

18. Regarding claims 1,3,17, Reich discloses a shipping container lifting device including a catch (4) including a top panel (3) of a corner fitting, said top panel further including a concave depression (fig 1, 9) within which depression is defined an entry hole adapted to receive and engage a weighted body (5) on a tether (col. 3, lines 13-16).

Reich teaches engagement slots for the weighted body below the top surface and within the entry hole (see figures 9,11A, 11B) including confining and receiving ends for two protrusions (6) on the weighted body (5) to be confined by the slots. Reich

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does not teach the engagement slots on the top panel of the catch or corner fitting (3).

Shields discloses an apparatus for securing loads prior to lifting which includes tie down plate (18) with entry hole (34) and slots (40) including receiving end (44) and a confining end (38) that engages the shaft (56) of the bulb hook (26). The slots or cutout arms (44) are of smaller width than the bob or cylindrical base (54) so that the cylindrical base is confined in the entry hole (see figures 1,2,4, and 6; abstract; col. 3, lines 23-65). In fact, Shields disclose the device of claim 1, but does not disclose this device for lifting cargo, but for securing cargo against shifting during lifting. It would have been obvious to one of ordinary skill in the art to modify the entry hole of Reich to include the engagement slots on the top panel of the corner fitting as taught by Shields in order to quickly engage and lock the weighted body within the corner fittings with fewer twisting operations.

19. Regarding claim 19, Reich discloses the corner fittings are permanently connected to the load container (4); see figs. 1 and 2.

20. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Reich and Shields as applied to claims 1,3,17 above, and further in view of Holden. Reich does not disclose corner fittings (3) are removably connected; the corner fittings are welded on to the container that carries the load. Holden discloses corner fittings or countersunk plates (1) for log lifting container (9). The corner fittings (1) are removably connected to the log lift by bolts (12). It would be obvious to one of ordinary skill in the art to include removable corner fittings on the combination of Reich

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and Shields as taught by Holden instead of permanently welding the fittings onto the container so that the fittings could be exchanged between multiple containers.

Response to Arguments

Applicant's arguments have been carefully considered but are not persuasive. Applicant has argued that Leonard Jr. US 4,925,226 teaches away from Shields 3,792,892 because in the last paragraph of the background of the invention of Leonard, Shields 3,792,892 is described as having numerous disadvantages including disengagement of the hooks during shifting and rolling, slackening of the cables which would also disengage the hooks, and undue strain on the hooks and hoist cable due to the design of the invention, which would render the combination of Leonard 4,925,226 and Shields 3,792,892 having no reasonable expectation for success or suggestion or motivation to combine.

Examiner does not disagree with these arguments, however, US Patent 3,792,892 was never applied in the rejection, and it is unclear to the examiner why references to this patent have been made. Applicant should refer back to both of the previous rejections which include references to Shields 3,796,404 an invention that is clearly different in function and structure than the patent applicant is referring to in substantiating these arguments.

Leonard discloses a lifting device with only entry hole (15) for the weighted body (26) to pass through. Leonard does not teach this entry hole including at least one slot comprising a confining end and a receiving end. Shields US 3,796,404 discloses the

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device of claim 1, but the device does not move an item relative to a support surface as described in the preamble of claim 1, Shields discloses a device that secures an item relative to a support surface (fig 6) using a catch including a top panel (18) and at least one slot (40) comprising a confining end (38) and a receiving end (44) open to an entry hole (34) in said top panel, and a cylindrical bob (26) including weighted body (54) insertable through said entry hole (34) and a tether (30) attached to said bob (see figures 1,2,4, and 6; abstract; col. 3,lines 23-65). In fact, Shields discloses the device of claim 1, consisting of a device for securing a container, Shields not disclose this device for lifting cargo, but for securing cargo against shifting during lifting. It would have been logical to modify the entry hole (15) of the corner fitting of Leonard, Jr. et al. to include slots with confining ends as taught by Shields so that the weighted body or crossbar (26) could be further restricted from passing through the hole and disengaging from the corner fitting and consequently dropping the load.

Please also see US 4,457,650 to Tseng: Figures 1G and 1H; US 4,877,361 to DeRosa et al: Figures 1 and 2; US 5,733,082 to Shrader Figures 2-4, for similar structure including a catch with a top panel and at least one slot comprising a confining end and a receiving end open to an entry hole in said top panel, and a cylindrical bob including weighted body insertable through said entry hole and a tether attached to said bob.

Conclusion

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All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.129(a) and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.129(a). Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the submission under 37 CFR 1.129(a). See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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EOO 5/29/06